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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,715	02/10/2004	Roy Gary Black	ISI 0402	3836
7590 H. Michael Brucker Suite 110 5855 Doyle Street Emeryville, CA 94608			EXAMINER WENDELL, MARK R	
			ART UNIT 3635	PAPER NUMBER
			MAIL DATE 04/09/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/775,715

**Applicant(s)**

BLACK, ROY GARY

**Examiner**

MARK R. WENDELL

**Art Unit**

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 32-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 32-37 and 39 is/are rejected.
- 7) ☐ Claim(s) 38, 40 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 32-37 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Allen (US 6041566). Regarding claims 32 and 39, Allen illustrates in Figures 2 and 3 a vertical wall structure (10) comprising:

- A foundation wall (12) that has a length and width;
- A plurality of straw bales (14) stacked a plurality of courses high with their lengths aligned with the length of the foundation, on the foundation wall (12) where the bales have a generally rectangular shape;
- A plurality of vertically oriented bracing ladders (16-18, 20, 34A, 34B) attached to the foundation wall at spaced apart locations along the length of the foundation wall (see Figure 2) wherein each said ladder is a truss (17, 18) formed by a pair of spaced apart rails (20) and connecting struts (22) affixed between said rails with said struts and rails lying, in a common plane and the space between said rails being greater than the width of said bales, said ladders being disposed at locations on said foundation wall whereby the common plane of said ladders is transverse to the length

of said foundation wall and generally parallel to the ends of said bales and wherein said ladder struts are located between said rails in a pattern that includes openings between said rails large enough for a said bale to pass through; and

- Wherein a ladder strut (22) of the bracing ladder is abutted by the end of at least one bale and each bracing ladder surrounds at least one of the bales between the rails (see Figure 2).

The examiner notes that in regards to claim 39, the method of assembly of the wall would be inherent given the structure of the wall disclosed within Allen.

Regarding claim 33, it can be seen in Figure 2 that the rails (20) of the ladder are located at either side of the mid-length of the bale.

Regarding claim 34, Allen illustrates in Figures 2 and 3 bales (14) in adjacent courses abutting a strut (22) of the ladder.

Regarding claim 36, Allen teaches in Column 2, lines 25-30, the bales being stacked in running bond.

Regarding claim 37, Allen illustrates in Figure 4 a plurality of X-shaped spars (24) disposed at the ends of the mid-bales and having opposing pairs of legs that straddle the mid-section of the bales.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Allen (US 6041566). It is described above what is disclosed by Allen; however the reference fails to teach the rails being placed 3 bale lengths apart. It would have been obvious matter of design choice to modify Allen by having the rails be 3 bale lengths apart, since applicant has not disclosed that having the rails a certain space apart solves any stated problem or produces any unexpected results and it appears that the wall system would perform equally well with the rails spaced a bales length apart. Also, the examiner notes that the dimension limitation relies solely on the actual size of the bale. One could have bales that are one-third the size of those disclosed in Allen. It is well known in the art that the size of bales vary greatly.

***Allowable Subject Matter***

Claims 38 and 40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: As described in the above Office Action, many of the limitations were found in Allen; however there is no Figure or indication within the specification of Allen that the X-shaped spars are attached to the anchor dowels. The X-shaped spars, as described in column 5 of Allen, are placed on the ends of the bales for handling and support purposes, however it is never indicated or suggested that they be attached to the anchor or anchor dowel. The examiners cited prior art also fails to teach X-shaped spars at the end of the bales being anchored to the foundation.

### ***Response to Arguments***

Applicant's arguments with respect to claims 32-40 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK R. WENDELL whose telephone number is (571)270-3245. The examiner can normally be reached on Mon-Fri, 7:30AM-5PM, Alt. Fri off, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The

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fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot/  
Supervisory Patent Examiner, Art  
Unit 3635

/M. R. W./  
Examiner, Art Unit 3635  
March 27, 2008